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Report of the Special Rapporteur on the situation of human rights in Cambodia

Note by the Secretariat

The Secretariat has the honour to transmit to the Human Rights Council the report of the Special Rapporteur on the situation of human rights in Cambodia, Rhona Smith, prepared pursuant to Council resolution 30/23. During the year under review, the Special Rapporteur monitored the situation of human rights in Cambodia, receiving information from different stakeholders, including the Government, civil society organizations and private individuals. The Special Rapporteur undertook one mission to Cambodia, from 9 to 19 October 2016.

Although there have been encouraging signs of progress in some areas of human rights, the general situation has been characterized by political tensions. Initial reports have suggested that the local elections of 4 June 2017 were carried out in a peaceful, efficient and transparent manner, with a high voter turnout. The national strategic plans and policies for achieving the Sustainable Development Goals are being prepared and should provide a framework for making progress in terms of implementing many civil, cultural, economic, political and social rights in the country and for measuring that progress.

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Report of the Special Rapporteur on the situation of human rights in Cambodia

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I. Introduction

1. The present report is submitted by the Special Rapporteur on the situation of human rights in Cambodia, Rhona Smith, in accordance with Human Rights Council resolution 30/23. During the year under review, the Special Rapporteur monitored the situation of human rights in Cambodia, receiving information from various stakeholders, including the Government, civil society organizations and private citizens. The Special Rapporteur undertook one mission to Cambodia, from 9 to 19 October 2016. The present report contains the findings from that mission and information on the current situation on human rights.

2. The Special Rapporteur is grateful to the Government for its cooperation during her mission and its willingness to extend invitations for future visits. She notes, in particular, that the Government has agreed to the dates of her next mission, which is scheduled to take place from 8 to 18 August 2017.

3. During the reporting period, the Special Rapporteur met with representatives of the Government, civil society organizations, the United Nations country team and development partners, among others. During her October mission, she had the privilege of meeting with the Minister of Foreign Affairs and International Cooperation, Prak Sokhonn; the Minister of Justice, Ang Vong Vathana; the Minister of Education, Youth and Sports, Hang Chuon Naron; the Minister of Women's Affairs, Ing Kantha Phavi; the Minister of Social Affairs, Veterans and Youth Rehabilitation, Vong Sauth; and the Chair of the Cambodian Human Rights Committee, Keo Remy, as well as other members of the Committee. She also met with the Governor of Phnom Penh, Pa Socheatvong, and with the then acting leader of the Cambodia National Rescue Party, Kem Sokha.

II. General situation of human rights in Cambodia

4. In October 2016, many events were held to mark the twenty-fifth anniversary of the signing, on 23 October 1991, of the Agreements on a Comprehensive Political Settlement of the Cambodia Conflict (Paris Peace Agreements), which laid the foundation for present-day Cambodia, a State that has built on the peace and stability secured and become an active member of the Association of Southeast Asian Nations (ASEAN), the United Nations and other international organizations. Since the Paris Peace Agreements were signed, recognition of international human rights standards has been an integral part of Cambodian governance. Article 3 of the Paris Peace Agreements, concerning the sovereignty, independence, territorial integrity and inviolability, neutrality and national unity of Cambodia, proclaims that "all persons in Cambodia shall enjoy the rights and freedoms in the Universal Declaration of Human Rights and other relevant human rights instruments". Article 31 of the Constitution reinforces that commitment to human rights, as does the impressive range of human rights treaties Cambodia has voluntarily ratified. However, many of the rights enshrined in the Constitution have not yet been fully realized for all in Cambodia. Moreover, many of the recommendations accepted by the country in the framework of the universal periodic review and many of the recommendations made by the United Nations treaty bodies and special procedure mandate holders are pending implementation. Nevertheless, it is noted that the memorandum of understanding between the United Nations and Cambodia providing for the ongoing presence of the country office of the Office of the United Nations High Commissioner on Human Rights (OHCHR) was finally concluded in December 2016. This secures ongoing support for the Government in realizing its human rights obligations.

5. The political situation continues to have implications for the protection and promotion of all human rights in the country. As reported orally to the Human Rights Council at its thirty-third session, the murder on 10 July 2016 of prominent Cambodian political analyst and social activist Kem Ley heightened tensions. Those tensions continued until the end of the period under review and the commune/*sangkat* (local) elections of 4 June 2017. Preliminary reports from the authorities and observers indicate that those elections appear to have been held without major incidents and in accordance with the law.

The political situation was dominated by those local elections and by preparations for the 2018 general election, which appear to have had a negative impact on the perception and actual realization of human rights in the country. However, free and fair elections held in accordance with the Constitution and the exercise of rights to political and public participation play a crucial role in promoting democratic governance and the rule of law and in advancing all human rights.

6. Relations between the Cambodian People's Party, the ruling party, and the Cambodia National Rescue Party (CNRP), the largest opposition party, remain tense. Since the previous report of the Special Rapporteur (see A/HRC/33/62, para. 7), several senior members of CNRP, including members of parliament whose parliamentary immunity was revoked, have had additional charges brought against them or been the subject of convictions and sentences. The former CNRP President, Sam Rainsy, was in voluntary exile from October 2015, then was formally barred from returning to Cambodia in October 2016, following additional convictions and new court cases. (Although he has dual French and Khmer nationality, it is problematic in human rights terms for Cambodia to take steps to prevent a Cambodian national from returning home.) The travel ban was apparently lifted on 14 June 2017, after submission of the present report.

7. The current President of CNRP, Kem Sokha, was convicted in September 2016 for failing to appear for questioning, although he later received a royal pardon and left his self-imposed house arrest. Senator Hong Sok Hour (formerly of the Sam Rainsy Party) was sentenced to 7 years' imprisonment on 9 November 2016 for forgery and incitement in connection with a Facebook post. Senator Thak Lany (formerly of the Sam Rainsy Party, currently in exile) was convicted in absentia to 18 months' imprisonment on charges of defamation and incitement in connection with a video clip on Facebook purportedly of a speech with comments on the death of Kem Ley. In its decision of 5 April 2017 on 15 Cambodian parliamentarians who had been subjected to arrest, harassment and suspension from Parliament, the Governing Council of the Inter-Parliamentary Union expressed deep concern at the escalation of the situation and noted a lack of cooperation from the Government on those cases.[1]

8. CNRP has periodically withdrawn its participation in the National Assembly, which continues to have implications for the legislative process. Draft laws, especially those that are fast-tracked, do not appear to go through rigorous reviews for compliance with international human rights law. A prominent example are the amendments to the Law on Political Parties, which were fast-tracked early in 2017. The amendments prohibit anyone convicted of a crime from holding political office and permit the dissolution of any political party deemed to be secessionist or subversive. The former provision is similar to one that was included in the Law on Trade Unions that prohibited convicted persons from leading trade unions. Given that the courts tend to interpret provisions of the current criminal law broadly, many individuals could find themselves barred from holding office.

9. The draft cybercrime laws mentioned in the Special Rapporteur's previous report (see A/HRC/33/62, para. 34) have still not been published, but draft labour laws are in circulation. The Special Rapporteur has received notes from stakeholders expressing concern about the draft law on a minimum wage and the draft law on labour dispute procedures. Both have potentially positive benefits for workers in Cambodia, yet appear to contain potentially worrying provisions, including provisions limiting negotiation and transparency and provisions increasing the work of the Arbitration Council without making additional funding and support available. The draft law on a minimum wage will extend the wage negotiation system currently deployed in the garment sector to other sectors, which could result in an increase in wages for many Cambodians. Some articles of the draft law, however, would restrict fundamental freedoms of expression, assembly and association, such as the proposed ban on any form of objection to the agreed minimum wage and the apparent prohibition on independent research related to the minimum wage.

10. The Government of Cambodia has not yet published its strategy for implementing the Sustainable Development Goals. However, there continue to be discussions in several

[1] See www.ipu.org/hr-e/200/cmbd27.pdf

government ministries on the matter. The Council for the Development of Cambodia is leading the effort to implement the Goals at the local level, a process that should conclude in 2017. As with the Millennium Development Goals, Cambodia is adding an additional goal on mine-clearing. It is hoped that the Government will be in a position to publish its initial strategies soon and that work can continue on strengthening the rights and freedoms of all Cambodians and on achieving the Goals.

11. Cambodia has continued to be a member of the ASEAN Economic Community. It was granted lower-middle income status by the World Bank on 1 July 2016 and has, according to preliminary estimates, maintained an annual economic growth rate of almost 7 per cent. Its gross domestic product is forecast to grow at a rate of around 7 per cent in 2017 and 2018. There is some evidence of a slight increase in output from the agricultural sector, which, if maintained, could have further impact on land rights.

12. Despite the significant progress that Cambodia has made since 1991, it is also important to recall that Cambodian history demonstrates the tragic consequences of human rights not being adequately respected and robustly protected. Respect for human rights is an integral part of ensuring lasting peace in the country. A liberal democracy system based on pluralism, as the Constitution decrees, requires periodic and genuine elections, which should not be considered a threat to internal stability.

13. During the Special Rapporteur's mission in October, the Minister of Foreign Affairs and International Cooperation confirmed the Government's understanding that respect for sovereignty and respect for human rights were compatible. The Special Rapporteur encourages such an approach and reminds the Government that the fair and balanced monitoring of human rights by international bodies is integral to that approach. As the United Nations High Commissioner for Human Rights commented at the opening of the thirtieth session of the Human Rights Council, "sovereignty cannot be damaged by carefully evaluated commentary".[2]

III. Vulnerable groups and discrimination

14. International human rights law is predicated on the premise that all persons should enjoy all freedoms and rights without discrimination. In all societies, however, there are marginalized groups whose enjoyment of rights is compromised in some way. Sustainable Development Goal 10 is to reduce inequality within and among countries. In line with international law, rights and freedoms should be enjoyed without distinction of any kind, irrespective of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, sexual orientation, gender identity, disability or other status. As the Government of Cambodia has voluntarily agreed to be bound by international treaties that enshrine that principle, it is appropriate to consider the situation of marginalized groups and communities. In her previous report, the Special Rapporteur included a "subfocus" on indigenous peoples and women, among other issues. In the current report, she provides an update on those key groups and also looks at the situation relating to prisoners, persons in street situations, minorities and children. Other marginalized groups and communities are also addressed.

A. Persons in street situations

15. People who live, work or are otherwise dependent on the streets are particularly vulnerable. In her previous report, the Special Rapporteur noted that the Prime Minister had announced that the drop-in centre formerly known as Prey Speu Social Affairs Centre should be closed or made functional (see A/HRC/33/62, para. 9). In October 2016, the Special Rapporteur visited that facility to assess the living conditions and treatment of those rounded up and sent there. While the Minister of Social Affairs, Veterans and Youth Rehabilitation explained the improvements that had been made, there was no doubt that

[2] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16414&LangID=E.

further expansive and dramatic improvements were necessary to meet basic human rights standards. Despite claims by the authorities that those rounded up and brought to the centre had to remain there for a week to enable arrangements to be made by their families to collect them, most people who met with the Special Rapporteur had been there for considerably longer and many claimed they were being held against their will. Such a situation is consistent neither with the concept of a drop-in centre nor with the law. In the case of children, persons with mental health concerns, disabilities or long-term health needs, the authorities must ensure the identity of the person and verify the identity of an alleged family member wishing to collect him or her. However, those with independent capacity should be allowed to leave at will.

16. The Special Rapporteur observed that high numbers of people were crammed into basic rooms without adequate ventilation and with limited water and sanitation facilities. Bedding and food was provided. Many of the detainees had health issues, including HIV/AIDS, drug dependence and mental health or psychosocial conditions. Some women were pregnant. Several people had disabilities. However, appropriate professional medical support for those individuals was not available in the centre. For example, there were few pharmaceutical supplies in the medical unit and a local hospital was used for medical support. One block housed long-term residents, many of whom had psychosocial or mental disabilities or other specific health problems. Some of the people had either consented to living there or were in the centre because they had nowhere else to go.

17. Many of the detainees claimed they could not maintain contact with their children and relatives outside; some had been detained as a family unit but had then been separated in the facility. Many vulnerable people find themselves in street situations and while some may have infringed laws, for example laws on substance abuse, many have not. Several children, some accompanied by a parent or other care giver, others not, had also been detained. During her visit, the Special Rapporteur witnessed some unaccompanied children being released into the care of a non-governmental organization (NGO) working with street children. Most persons in the centre were being detained against their will, without a legal basis, making their detention arbitrary. An urgent, holistic, coordinated interministerial and multi-agency response is needed and must be adequately resourced to alleviate the situation. The Special Rapporteur welcomes the reassurances given that there will continue to be 24-hour access to the centre for the United Nations and NGOs. The establishment of a proper (and properly resourced) facility that provides the necessary care, services and assistance to persons in street situations should be prioritized. Its intended beneficiaries should be able to obtain assistance on a voluntary basis. Expeditious action should be taken by the Government to implement the recommendations made at the national conference on persons in street situations held in Phnom Penh in December 2015.

18. The Special Rapporteur was informed by the Minister of Social Affairs, Veterans and Youth Rehabilitation of the existence of drug rehabilitation centres and of the planned facility in Kandal Province for people with psychosocial disabilities. It is hoped that a holistic response to addressing the real needs of people who are drug dependent or who have psychosocial disabilities will be taken, to ensure they are supported and, where appropriate, can be successfully rehabilitated into the community. Target 3.5 of the Sustainable Development Goals seeks to strengthen the prevention and treatment of substance abuse, including narcotic drug abuse and harmful use of alcohol, which is particularly relevant in Cambodia. The creation of a specialized centre for psychosocial care should be pursued, although only if compliance with human rights standards can be guaranteed.

19. The Special Rapporteur recommends that the Government include, in its imminent strategy for realizing the Sustainable Development Goals, action plans for reducing poverty (Goal 1), ensuring health and well-being (Goal 3), ensuring full and productive work for all (Goal 8), addressing food security and clean water (Goals 2 and 6) and reducing inequalities (Goal 10). As interministerial and multi-agency responses evolve, the number of people in street situations should decrease. In the interim, their basic human rights and freedoms should be protected.

B. Prisoners

20. Considering the situation of prisoners, the Special Rapporteur reiterates her concern about the extensive use of pretrial detention in Cambodia. Although article 203 of the Code of Criminal Procedure establishes that provisional detention should be exceptional, it appears to be almost standard procedure. The Government should consider doing more to raise awareness among judges on alternatives to detention in an effort to encourage a reduction in the automatic recourse to pretrial detention. The Government has acknowledged that the situation in prisons is a problem (see CCPR/C/KHM/Q/2/Add.1, para. 14) and the Human Rights Committee has commented on overcrowding (see CCPR/C/KHM/CO/2, para. 14). It is clear that the current practices on provisional detention exacerbate the problem. For example, during a visit to Correctional Centre 1 in October 2016, the Special Rapporteur was informed that 1,512 of the 4,736 detainees were either in provisional detention or were awaiting the outcome of appeal processes. The Ministry of Justice should embark on awareness-raising initiatives to ensure public support for alternatives to provisional detention. It should make additional efforts to remind the judiciary of the range of options available under the Code of Criminal Procedure and of the appropriate judicial form, referencing the reasons for detention (see art. 205).

21. A high-profile case of pretrial detention has involved the continued detention of the following members of the Cambodian Human Rights and Development Association, an NGO: Lim Mony, Ny Sokha, Yi Soksan, Nay Vanda and Ny Charkya. Mr. Charkya, the former deputy secretary-general of the National Election Committee, was detained at the same time as the others but faces separate charges. The detention of the above-mentioned individuals has been the subject of several urgent appeals and an opinion of the Working Group on Arbitrary Detention, which found their detention to be arbitrary (see also para. 66 below).

22. The Special Rapporteur regrets not having been able to meet with those detainees, as requested, during her visit to Correctional Centre 1 in October 2016. On 27 April 2017, their detention was extended by a further six months, purportedly to enable the authorities to question witnesses and undertake further investigations; it was the last extension permissible under Cambodian law. By that time, those five people had already been detained for a year without any charges proceeding. Such prolonged detention has an impact not only on the right to liberty of the detainees, but also on the rights and freedoms of their families, as some detainees were the principal earner in their household. Moreover, it affects the capacity of a prominent and well-established NGO, the Cambodian Human Rights and Development Association, to continue to defend human rights in Cambodia. The judge's decision dated 24 March 2017 banning visits by anyone other than family members and lawyers has exacerbated the detainees' already limited communication with the outside world and means that OHCHR staff can no longer meet with the detainees and monitor their detention.

23. Given the apparent lack of evidence to back any of the alleged charges, the judicial authorities should immediately release the above-mentioned individuals or bring charges against them so that a court can make a lawful determination. Visitation and monitoring rights should be restored.[3]

24. Correctional Centres 1 and 2 in Prey Sar commune, Phnom Penh, are the principal prisons for men and women in Cambodia. During her visit in October 2016, the Special Rapporteur received direct information on the level of overcrowding. The prison for men (Correctional Centre 1), which the prison authorities said had a capacity of 1,300, held 4,736 detainees; the prison for women (Correctional Centre 2) was said to have a capacity of 600-700 but held 959 detainees. In respect of overcrowding, the Special Rapporteur learned from the Minister of Justice of a pilot programme on non-custodial sentencing for minor misdemeanours for which a sentence of less than six months in prison is usually handed down. The pilot programme could assist in temporarily alleviating the problem of

[3] On 29 June 2017, after the present report was submitted, the individuals were released under judicial supervision. Trial dates are pending.

overcrowding. Its results should be carefully reviewed by the Ministry of Justice to determine whether the programme could, when accompanied by appropriate public education and awareness-raising programmes, limit the number of prisoners while ensuring the maintenance of law and order. The Ministry of the Interior should continue to work on a holistic response to the poor conditions in prisons and the problems caused by overcrowding. Although doing so would involve a significant expense, the rights of all detainees must be fully protected.

C. Indigenous peoples

25. The Special Rapporteur reviewed the situation of indigenous peoples in her previous report (see A/HRC/33/62, paras. 11-18). As of May 2017, 124 indigenous communities have been recognized as such by the Ministry of Rural Development, 109 have been recognized as legal entities by the Ministry of the Interior and 14 communities have been granted communal land titles (those 14 communities hold 459 communal titles). This is a modest increase over the previous year. The Ministry intends to issue 50 titles by the end of 2018, but the complexity and cost of obtaining communal land titles (approximately $70,000 per title) impede the process. However, while communal land titles can provide protection for indigenous communities, they cannot be used as collateral for loans and therefore reduce the opportunities for communities to access financing and to develop economically.

26. In October 2016, the Special Rapporteur met Suoy community groups and received petitions from other indigenous groups. It was clear that land titles continued to be a problem. Progress remained slow and indigenous peoples continued to draw the Special Rapporteur's attention to the cumbersome and complicated procedure for securing land titles in Cambodia. (All petitions received were taken by OHCHR Cambodia for processing.) Many of the complaints received on land cases had been raised before judicial and non-judicial bodies, senior government ministers, the national commission for land dispute resolution and the parliamentary committees on human rights and justice. Alleged victims were apparently appealing to multiple bodies and were finding the legal and administrative mechanisms complex and ineffective.

27. Members of the Suoy indigenous community encountered additional problems when some members successfully registered individual land titles under one directive while other members of the community were seeking community land title for a reduced area of claimed land. Many Suoy people claimed they had lost their farmland to economic land concessions, had received inadequate compensation and were destitute.

28. The Special Rapporteur recommends that the Government consider simplifying the communal land titling process to reduce the number of steps required and that it allocate additional funding for the development of indigenous communities. She suggests that the Government review current laws and policies to ensure the fulfilment of its obligations under the United Nations Declaration on the Rights of Indigenous Peoples and that it disseminate and implement the Declaration at the local level.

D. Minorities

29. Minority groups are entitled to specific protection under article 27 of the International Covenant on Civil and Political Rights. In addition, article 31 of the Constitution provides that Khmer citizens are equal before the law and enjoy the same rights, liberties and duties regardless of race, colour, sex, language, belief, religion, political tendencies, birth origin, social status, wealth or other situation.

30. During the reporting period, the Special Rapporteur examined the situation of minority groups, including ethnic and religious minorities living in Cambodia, in part because she received expressions of concern on the issue of statelessness. Her preliminary findings are outlined below.

Cham communities

31. The Cham people form the majority of the Cambodian Muslim population and are generally recognized as a religious rather than an ethnic minority in Cambodia. They form a relatively heterogeneous group and most live along the Mekong River and around Tonle Sap Lake. They speak the Cham language but also, usually, Khmer. The Cham people were considered Cambodian citizens before the Khmer Rouge period, when they were specifically persecuted. Case 002/02 against Nuon Chea and Khieu Samphan before the Extraordinary Chambers in the Courts of Cambodia includes a charge of genocide against the Cham. The Cham people have now re-established their lives in Cambodia and their religious practices. Many survive by fishing; others live in Phnom Penh. In October 2016, the Special Rapporteur visited urban Cham communities to better understand their situation.

32. Urban Cham communities generally feel well integrated into Khmer society and do not feel that their religion or ethnicity affects how they are treated. There is evidence of specific education combining the national curriculum with Islamic subjects and Qur'anic studies. The Minister of Education, Youth and Sports informed the Special Rapporteur that the salaries of some 1,400 Muslim teachers were being supported by his Ministry. Cham people were active in politics. There was also evidence of intermarriage. Those with whom the Special Rapporteur met had identity documents and were able to travel freely. The poorer Cham, however, faced the same challenges as other poor Khmer, including vulnerability in respect of their economic, social and cultural rights, for example in terms of access to clean water, sanitation and health care. The information received, however, indicated that there was little discrimination against Cham communities.

Ethnic Vietnamese and Khmer Krom communities

33. The ethnic Vietnamese in Cambodia are a heterogeneous minority. Many are recent migrants and people engaging in cross-border trade. Some are in Cambodia legally, others illegally, and they have many different residency statuses. A particular focus for the Special Rapporteur are those ethnic Vietnamese who have lived in Cambodia for generations and the Khmer Krom, ethnic Khmer people who found themselves living in Viet Nam when the borders were drawn. Many Khmer Krom were displaced during the periods of conflict in the latter part of the twentieth century, often losing their identity papers. Case 002/02 before the Extraordinary Chambers in the Courts of Cambodia includes a charge of genocide against the Vietnamese in Cambodia, distinct from any alleged crimes on Vietnamese territory. Following the return of peace in Cambodia, many of those people returned to Cambodia or regrouped into pre-conflict era communities.

34. In October 2016, the Special Rapporteur met with ethnic Vietnamese and Khmer Krom communities. Many of those individuals appeared to face challenges with birth registration and identity cards. The lack of identity documents inevitably had an impact on many other rights, particularly to basic social services. The Government published its National Strategic Plan of Identification 2017-2026 in June 2016. The Plan seeks to ensure that everyone is recognized, a goal that is consistent with international human rights law. It also underpins the Sustainable Development Goals principle of ensuring that no one is left behind. The Plan should help ensure that all children in Cambodia are able to have their births registered and that all those who have historically been based in the country can once again get appropriate identity cards. In terms of international human rights law, all children are entitled to a nationality and to birth registration. It is worrying that a number of people living in Cambodia or deported to Viet Nam are stateless or at risk of being rendered stateless. The Special Rapporteur welcomes the willingness of the Government to grant Khmer citizenship to Khmer Krom, in accordance with article 33 of the Constitution. Despite this, in reality many Khmer Krom face difficulties in getting birth certificates and identity documents in Cambodia. The Government should abide by its Constitution, its national laws and the international conventions it has ratified with regard to nationality, citizenship and non-discrimination. It should also take steps to prevent and end statelessness in Cambodia.

E. Women

35. The Special Rapporteur raised a number of issues on women in her previous report (see A/HRC/33/62, paras 19-27). Since that report was prepared, the Government has submitted its report in follow-up to the concluding observations of the Committee on the Elimination of Discrimination against Women (CEDAW/C/KHM/CO/4-5/Add.1), in March 2016. The Committee has requested the Government to provide further information in its next periodic report, due in October 2017, including on action taken to: (a) ensure that cases of violence against women, including domestic and sexual violence, are effectively prosecuted and not systematically diverted to mediation; (b) ensure that all women can lodge formal complaints about domestic and sexual violence, by destigmatizing victims and raising awareness about the criminal nature of such acts; and (c) ensure that public awareness-raising campaigns address all forms of violence against women (see CEDAW/C/KHM/CO/4-5, para. 21).

36. In her previous report, the Special Rapporteur addressed the role of women in politics (see A/HRC/33/62, para. 22). As the communal elections were being held as the present report was being finalized, information is not yet available on the number of women elected. However, as the general election is expected to be held before the discussion on the next report to the Human Rights Council, the Special Rapporteur recalls that article 4 of the Convention on the Elimination of All Forms of Discrimination against Women permits temporary special measures to redress imbalances and that the Committee on the Elimination of Discrimination against Women has twice recommended the implementation of temporary special measures to increase the representation of women in decision-making positions, especially in politics, the judiciary and the foreign and diplomatic service (see CEDAW/C/KHM/CO/4-5, para. 29, and CEDAW/C/KHM/CO/3, para. 24).

37. During her mission in October 2016, the Special Rapporteur was asked by the Minister of Justice to assist the Government in reviewing surrogacy laws. That request was prompted by changes in the laws of a number of other States that have restricted access to surrogacy arrangements, especially transnational and international commercial surrogacy arrangements. The Government of Cambodia has banned surrogacy in the country by banning embryo transfers to surrogate mothers and extending the laws banning the commercial donation of human organs for gestational surrogacy arrangements. The situation requires careful monitoring to ensure that the rights of vulnerable women are protected. The Government is concerned about the potential exploitation of vulnerable women and the possibility of transborder commercial surrogacy arrangements. Ending poverty (Sustainable Development Goal 1) and ensuring good health and well-being (targets 3.1 and 3.2 of the Goals, in particular) are especially relevant in that context. The Government also has to protect the rights of all children born from pre-existing surrogacy arrangements. There are clear implications for citizenship and the family rights of such children. The Special Rapporteur recommends that the Government remain alert to the possibilities of commercial surrogacy operators seeking to operate in Cambodia and that it develop a law that protects the rights of all involved.

38. Violence against women and gender-based violence continue to be a problem in Cambodia. There is no evidence of greater use being made of legal provisions to prosecute perpetrators, and no evidence of increased protection of vulnerable women. Many victims of violence engage in mediation and return to live with the alleged perpetrator. It is hoped that plans to reach target 5.2 of the Sustainable Development Goals, which aims at eliminating violence against women and girls in public and in private, will add some impetus to the Government's efforts in that regard. The Special Rapporteur has also received reports of a high incidence of violence against lesbian, gay, bisexual, transgender and intersex persons. The Government should consider implementing awareness-raising strategies to bring about a cultural shift in attitudes towards violence against women, strengthen the legislative framework thereon and ensure that the police thoroughly investigate all complaints, bring perpetrators to justice and provide protection to victims. Interministerial dialogue on the issue must continue and special consideration should be given to addressing violence against lesbian, gay, bisexual, transgender and intersex persons.

F. Children

39. It is estimated that two thirds of the Cambodian population are under the age of 30. Realizing the rights of children is therefore particularly important for the future of Cambodia, which is a State party to the Convention on the Rights of the Child and has a number of laws, policies and action plans focusing on children's rights. As the Special Rapporteur has already noted, considerable progress has been made on education (see A/HRC/33/62, paras. 35-37). At the beginning of the reporting period, the new Law on Juvenile Justice was adopted. The Law seeks to avoid having young offenders tried as adults and receiving custodial sentences. It covers a number of areas, including drug use, crime and homelessness (persons in street situations), and encourages the adoption of management and education strategies that include families and communities in the implementation of juvenile protection policies. The Ministry of Social Affairs, Veterans and Youth Rehabilitation is working on the implementation of a number of aspects of the Law, as is the Ministry of Justice. The promulgation of the Law is undoubtedly a positive step towards realizing the rights of children. Information received by the Special Rapporteur in October 2016 indicates that the number of young people in detention was increasing because of tougher action against drug use and drug-related crime. The Government should mobilize the human and financial resources necessary to ensure adequate implementation of the Law on Juvenile Justice, carefully monitor its implementation and ensure that the provisions of the Convention on the Rights of the Child are respected.

40. Cambodia has experienced a number of problems with residential care facilities, in particular "orphanages". In recent years, the authorities have striven to close down disreputable facilities and regulate intercountry adoptions, which it banned while it was working on strengthening the implementation of the adoption law so as to better protect Cambodian children and ensure that appropriate safeguards were in place before adoptions were approved. The Ministry of Social Affairs, Veterans and Youth Rehabilitation launched an action plan in January 2017 for improving childcare with the target of safely returning 30 per cent of children in residential care to their families over the following two years. Poverty is a key concern for many children living in residential care. Programmes aimed at returning children to their families should not only accord with the principle of the best interests of the child but also address several of the targets of the Sustainable Development Goals, including reducing poverty (target 1.2), implementing nationally appropriate social protection systems (target 1.3) and promoting the social, economic and political inclusion of all (target 10.2).

41. A number of other issues have been brought to the attention of the Special Rapporteur that require further investigation. Child labour and trafficking in children are two examples. During the next reporting period, the Government will complete its periodic report to the Committee on the Rights of the Child, which is due in 2018.

G. Persons with disabilities

42. The Government's first report to the Committee on the Rights of Persons with Disabilities was due in January 2015. The fact that the report is overdue is a concern, not least because the Government frequently reiterates the importance it places on the rights of persons with disabilities. The Special Rapporteur is aware that persons with disabilities suffer many disadvantages in Cambodian society. Although this topic has not yet been examined by the Special Rapporteur in depth, during discussions with ministries and through field visits it has become apparent that many public services, including health and education, as well as polling stations, are not physically accessible.

43. The rights of persons with psychosocial or mental health conditions is particularly worrying. Notwithstanding the planned facility in Kandal Province previously mentioned, there is very little professional support available in the country for those with mental health conditions. Given the recent history of Cambodia, in particular the widespread experiences of conflict and genocide, this is problematic. The many public statements on inclusivity made by government ministers, including the Prime Minister, are positive. Cambodia also

has relevant laws, strategies and action plans. The current strategic plan includes objectives on reducing poverty, providing equal health services, ensuring full access to justice and preventing discrimination. An interministerial approach has been taken through the coordinating work of the Disability Action Council, which has established offices in all the provinces in order to be more accessible to persons with disabilities. This supports the work on promoting the rights of persons with disabilities of ASEAN and the Economic and Social Commission for Asia and the Pacific of the United Nations. It is clear that more work needs to be done to better assess the situation of the rights of persons with disabilities in Cambodia. Realizing the Sustainable Development Goals adds further support to the government initiatives in ensuring that no is left behind. The Government should submit its report to the Committee on the Rights of Persons with Disabilities as soon as practicable, to provide the basis for a constructive dialogue with the Committee on improving protection, promotion and respect for the rights of persons with disabilities in Cambodia. The Government should also consider inviting the Special Rapporteur on the rights of persons with disabilities to visit and provide support.

IV. Democratic space

44. During the reporting period, the application of the range of laws discussed in the previous report of the Special Rapporteur continued to be of concern (see A/HRC/33/62, paras. 28-34). The deterioration in the democratic space is reflected in a white paper issued by the Ministry of Foreign Affairs and International Cooperation on 11 April 2017 entitled "To tell the truth". In it, the Ministry refers to "a campaign of disinformation led by some foreign governments and organizations, which twisted historical facts and events in an attempt to portray a negative image of Cambodia and to lay the blame on the government". The Special Rapporteur is included among the actors allegedly aiming to discredit the Government.

45. Many NGO representatives, trade union members and human rights defenders still find themselves subject to threats and harassment, arrest, pretrial detention and prosecution. The Special Rapporteur has received reports of civil society groups restricted in their education and training activities and limited in their day to day activities. An example is the "black Monday" campaign that was launched after the arrest of the staff of the Cambodian Human Rights and Development Association. People chose to wear black clothing on Mondays in solidarity with the detainees and took to the streets in protest. The Government tried to ban the campaign and security authorities were reportedly requested to closely monitor the activities of those participating in the campaign. A number of protesters were arrested and prosecuted under provisions dealing with such issues as defamation (art. 305), public insult (art. 307) and various public order offences. Tep Vanny was prosecuted following her participation in a black Monday event on 15 August 2016. In contrast to other participants, who were detained briefly and then released, she was then charged with "intentional violence with aggravating circumstances" relating to another protest in 2013. On 23 February 2017, she was sentenced to two and a half years' imprisonment.

46. Numerous reports have been received of police, military and security forces using roadblocks to regulate processions and assemblies. By way of example, a procession of people marking World Habitat Day, an event focusing on land and housing rights, while the Special Rapporteur was in Phnom Penh in October, resulted in violent clashes between protesters and the authorities. On 8 February 2017, Am Sam Ath, Monitoring Manager for the Cambodian League for the Promotion and Defense of Human Rights, was called in for questioning in connection with the procession, but was not charged. There can be no doubt that it is the responsibility of the Cambodian authorities to ensure the maintenance of public order and security. However, the Law on Peaceful Demonstrations must be carefully adhered to and the rights of all Cambodians to peaceful assembly and association must be protected. Notification letters, which are required under the Law, submitted by civil society organizations about public assemblies that they plan to organize are systematically rejected by the authorities without justification. This has happened even in respect of notifications of events for international commemorative days such as International Workers' Day on 1 May, the International Day of the World's Indigenous People on 9 August and Human

Rights Day on 10 December. The prohibition extends to the designated public space created by the Government for the organization of static gatherings (Freedom Park), which has been moved away from the centre of Phnom Penh.

47. Concern remains over the raft of laws (on associations and NGOs, on the election of members of the National Assembly, on trade unions, on peaceful demonstrations) that can be used to restrict freedom of assembly and association and freedom of expression. The Special Rapporteur reiterates her recommendation that the Government ensure that those laws are applied in a way that fully respects the human rights treaties that Cambodia has ratified. Moreover, the application of such laws should be regularly reviewed and, if necessary, revised.

48. The murder of Kem Ley on 10 July 2016 shocked the Cambodian public. On 23 March 2017, Oeuth Ang was convicted of the killing and sentenced to life in prison. Kem Ley's funeral procession (24 July 2016) and 100-day procession (15-16 October 2017), which attracted thousands of Cambodians, passed without incident. Both events had been threatened with bans and restrictions. The Special Rapporteur has received many petitions raising concerns over the perceived lack of transparency concerning the death of Kem Ley and the motive behind his murder. An independent political analyst, Kim Sok, has been in pretrial detention since 17 February 2017 on defamation and incitement charges for publically expressing his opinion that the ruling party was responsible for the killing of Kem Ley. Thak Lany was also convicted for alleged comments on this matter.

49. Taken together, these incidents and misapplication of laws has had the effect of restricting civil society space and diminishing the perceived democratic space in the country. There has been a negative trend whereby political activists, human rights defenders and journalists continue to face restrictions when exercising human rights and fundamental freedoms. This is particularly problematic during election years, when many Cambodians wish to petition political parties, partake in political rallies and generally exercise the rights protected in the Constitution and the laws of Cambodia, as well as in the international human rights treaties to which Cambodia is party. Balancing the need to maintain public order and security with freedoms of expression, assembly and association can be challenging. The consistent, reasoned, non-discriminatory application by the judiciary and other public authorities of the relevant laws and criminal code provisions, with due regard to the human rights obligations of Cambodia, is essential.

V. Land rights and housing

50. Land rights remain a major issue of concern in Cambodia, despite the ongoing efforts of the Government to review economic land concessions.

51. It remains imperative that land disputes be resolved definitively on clear and transparent grounds by appropriate bodies. As noted above, with regard to indigenous peoples, ever more complications arise. In the case of the Suoy indigenous community, an area of land was the subject of successful individual land title claims while simultaneously being the subject of a communal land title claim (see para. 27 above).

52. During her mission in October 2016, the Special Rapporteur undertook a field visit to Kampong Speu Province to assess the human rights situations of communities affected by sugar concessions. Phnom Penh Sugar Co. Ltd. and Kampong Speu Sugar Co. Ltd. received economic land concessions for adjacent areas. Those concessions were for sugar cane plantations and sugar processing. The Special Rapporteur met with many individuals who claimed to have been made destitute by the loss of farmland to concessions. Many claimed to have received inadequate compensation and to have been unaware of what they were agreeing to when their land was removed. Many also had little official land title documentation to the lands in question. As with the situation reported in Preah Vihear Province (see A/HRC/33/62, para. 40) and in Koh Kong and Stung Treng Provinces (see A/HRC/33/62, para. 42), there were issues with the adequacy of compensation and the appropriateness of relocation sites, as well as concerns expressed by the concession holder at the number of disputes faced years after the concession had been granted by the Government. Complaints were also received from the authorities and from key NGOs over

threats, violence and intimidation of the parties involved. The complexity of land titling and the necessity of adequately compensating land users and owners when concessions are granted notwithstanding, it appears that more needs to be done to ensure that compensation packages are fully understood by potential recipients and to ensure that all land disputes are resolved through a process free from threats, violence and intimidation.

53. The position of communities in Stung Treng Province affected by the hydropower dam (see A/HRC/33/62, para. 17) is particularly pressing as flooding is scheduled to commence in July 2017. Some villagers, including indigenous peoples, are refusing to relocate due to the perceived inadequacy and inappropriateness of the offers made. The Government should continue to review land concessions. Where there are concessions, there must be thorough consultations with all stakeholders, informed consent and understanding of compensation packages for dispossessed persons, and allocation of appropriate and adequate relocation sites, when applicable.

VI. Administration of justice

54. The Ministry of Justice continues to work on its programme of reforms and there is mounting pressure for more immediate results from the reform process (see A/HRC/33/62, para. 44). It is acknowledged that reforming the administration of justice is complex and should not compromise the actual or apparent independence of the judiciary. A number of high-profile cases during the reporting period have highlighted the disparate evidentiary standards used in courts. A few articles in the Code of Criminal Procedure address evidentiary requirements — articles 118, 127 and 321, for example. However, it appears that different judges apply different evidentiary standards of proof. Everyone charged with a criminal offence has the right to know and challenge the evidence against him or her. Moreover, consistency and fairness, especially in criminal cases, require that the standard of proof be the same in all similar cases. The Ministry of Justice should consider drafting guidelines on the evidentiary requirements and ensure that all judges are trained fully thereon. The decision to publish judgments should be acted upon as soon as possible. The lack of published reasoning on judicial decisions exacerbates the problem as the publication of legal reasoning would assist lawyers, convicted persons and the public to better understand decisions made in courts, aiding transparency, encouraging consistency and supporting the independence of the judiciary. Accordingly, the Special Rapporteur welcomes the decision of the Supreme Council of the Magistracy to publish a selection of judgments later on in 2017.

55. Two cases are under way at the Extraordinary Chambers in the Courts of Cambodia: the appeal of a third concluded during the reporting period. In the appeal of case 002/01 against Nuon Chea and Khieu Samphan, on 23 November 2016, the Supreme Court Chamber upheld the convictions for crimes against humanity of murder, persecution on political grounds and other inhuman acts in relation to the evacuation of Phnom Penh in April 1975, but reversed the convictions for the crime against humanity of extermination. It also reversed the conviction for the crime against humanity of persecution on political grounds in respect of the phased population transfer. Nevertheless, the Chamber confirmed the sentences imposed by the Trial Chamber.

56. Final oral submissions in case 002/02, the second against Nuon Chea and Khieu Samphan, are scheduled for 13-23 June 2017. The defendants have been charged with the genocide of Cham and Vietnamese minorities, forced marriage and rape, among other crimes. A judgment is expected within a year.

57. Judicial investigations in relation to case 003 against Meas Muth concluded on 10 January 2017.

58. Case 004 against Im Chaem, Ao An and Yim Tith was divided into three case files. On 22 February 2017, the co-investigating judges dismissed case 004/01 against Im Chaem, and case 004/02 against Ao An was closed on 16 December 2016. The investigation into case 004/03 against Yim Tith ended in June 2017. The revised 2017 budget for the Extraordinary Chambers in the Courts of Cambodia totals $30.13 million.

VII. Participation in the political process

59. The commune/sangkat elections were held on 4 June 2017; those elected commune councillors will then elect the members of the Senate. The elections appear to have been relatively peaceful. The final results have not yet been announced by the National Election Committee, although it is notable that the Committee has recorded a voter turnout of over 85 per cent. No substantiated reports of irregularities have been received, although the Committee reported receiving 79 official complaints. Observers reported improved electoral processes, including in terms of voter registration.[4] Early indications are that the elections were undertaken in a fair, efficient and transparent manner. Reports have been received, however, on the perceived impact of the tense pre-election environment and the application of a range of laws to political parties and the media.

60. In the lead-up to the commune/sangkat elections, it was widely reported that government ministers made public statements using violent rhetoric, including threats of military deployment to quell any protests or unrest following the announcement of the results. Senior officials regularly issued threatening and intimidating public messages calling people to vote for the ruling party. Earlier in the year, there was negative, potentially inflammatory rhetoric from the main political parties. Equal access for all political parties to television and radio broadcasting time was allegedly not respected.

61. On the eve of the two-week designated election campaign period, the National Election Committee issued a code of conduct for the media on the elections. The document allegedly drew on election laws, press laws, the rules and procedures of the Committee and a range of Cambodian laws. Despite purportedly allowing the exercise of freedom of the press and dissemination of information, concerns were raised by many stakeholders over the implications for the media.

62. Concerns raised with the Special Rapporteur included the prohibition on the media to disseminate information deemed to be misleading or inciteful, publish information that may have an impact on political stability, disseminate "confusing" information and express the journalist's own views. The use of many of these criminal provisions (on incitement, defamation, insult) has been criticized previously and the Government should ensure that the rights to freedom of expression and the press, based on pluralism, transparency and accountability, are respected and protected and that an open exchange of information between candidates, political parties and voters is encouraged. Article 142 of the Law on the Election of Members of the National Assembly and article 171 of the Law on the Election of Commune/Sangkat Councils were annexed listing some offences and sentences.

63. The Government should ensure that people's right to vote freely and according to their conscience is respected, as also stipulated in article 51 of the Constitution. The Special Rapporteur received reports prior to the elections indicating that some opposition politicians were being threatened and obstructed from campaigning and that some civil society election monitors were being subjected to intimidation and harassment. It is important to prevent such intimidating behaviour ahead of the 2018 general election. Elections should be conducted in a fair and transparent manner, with full respect for the peaceful enjoyment of the rights and freedoms of all voters.

64. As the Special Rapporteur noted in her previous report (see A/HRC/33/62, para. 55), there were and remain specific concerns among many stakeholders with regard to the credibility of the 2017 and 2018 elections owing to the current political situation in the country. All parties must cooperate to ensure that the general election of 2018 can take place in a peaceful manner and that the results will be accepted by the Cambodian people.

[4] Some observers will wait to release their reports until the official results have been announced.

VIII. Reporting to the treaty bodies and participation in the universal periodic review

65. A number of periodic reports by Cambodia to the treaty bodies are overdue: the report to be prepared on the basis of the list of issues prior to reporting on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the initial report on the International Convention for the Protection of All Persons from Enforced Disappearance; the combined fourteenth and fifteenth periodic reports on the International Convention on the Elimination of All Forms of Racial Discrimination; the initial report on the Convention on the Rights of Persons with Disabilities, which was due on 20 January 2015; and the combined fifth and sixth periodic reports on the International Covenant on Economic, Social and Cultural Rights. The sixth periodic report on the Convention on the Elimination of All Forms of Discrimination against Women is due on 1 October 2017 and, according to the information received from the Ministry of Women's Affairs, considerable progress had been made on it. The combined fourth to sixth periodic reports on the Convention on the Rights of the Child is due on 13 May 2018. The Government has decided not to submit the optional midterm report for the universal periodic review, reversing an earlier decision (see A/HRC/33/62, para. 56). The new President of the Cambodian Human Rights Committee explained to the Special Rapporteur that the reversal was due to a change in the management of the Committee. The Special Rapporteur suggests that Cambodia establish a schedule to ensure that reporting requirements are met in a timely manner. As previously stated (see A/HRC/33/62, para. 57), Cambodia should also consider publishing the two most recent reports of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

IX. Communications to the Government

66. Between April 2016 and May 2017, there has been only one response (to KHM 4/2016) to the communications sent by the special procedure mandate holders to the Government. During that time, five urgent appeals, two allegation letters and one other letter were communicated to the Government. In addition, the Working Group on Arbitrary Detention, at its seventy-seventh session, adopted an opinion finding the ongoing pretrial detention of Ny Sokha, Nay Vanda, Yi Soksan, Lim Mony and Ny Chakrya arbitrary and requesting the Government to ensure the immediate release of the detainees and to extend to them a right to compensation. The Working Group found the deprivation of liberty of the stated individuals to be in contravention of articles 7, 9-11 and 20 of the Universal Declaration of Human Rights and of articles 9-10, 14, 22 and 26 of the International Covenant on Civil and Political Rights (see A/HRC/WGAD/2016/45). The detention of the above-mentioned individuals has also been the subject of three urgent appeals (KHM 1/2017, 6/2016 and 3/2016). Other communications dealt with issues related to freedom of assembly and association (KHM 7/2016), freedom of opinion and expression (KHM 1/2017, 6/2016, 5/2016, 4/2016, 3/2016, 2/2016 and 1/2016), the environment (KHM 2/2016), arbitrary detention (KHM 1/2017, 6/2016 and 3/2016) and the protection of human rights defenders (KHM 1/2017, 6/2016, 4/2016, 3/2016, 2/2016 and 1/2016). The Special Rapporteur encourages the Government to engage more with the special procedures by replying to their communications, in order to facilitate a better understanding of the various situations and the Government's views thereon. This should enable progress to be made on resolving the issues raised in the communications and, where appropriate, ensuring redress.

X. Conclusions

67. **The progress made by Cambodia over the past 25 years is immense. The country has been transformed economically, although extreme poverty remains and the benefits of development have not been enjoyed equally by all Cambodians. The reporting period has brought fresh evidence of the tensions in the country and a reminder of the work that still needs to be done by the Government to strengthen the**

protection and promotion of human rights throughout the country. There remain a number of outstanding recommendations to which the Government is invited to respond. It is hoped that the action plan and strategy for realizing the Sustainable Development Goals will go some way to addressing those concerns and will enable the Government to work with other stakeholders in furthering the promotion and protection of human rights in Cambodia. The Special Rapporteur reiterates her willingness to work with the Government to better protect, respect and promote human rights for the benefit of all Cambodians.

XI. Recommendations

68. By way of supporting the Government in making tangible progress towards the range of recommendations, and in pursuance of discussions thereon, the following recommendations are highlighted for immediate action:

(a) Review outstanding recommendations made by the Special Rapporteur, the treaty bodies and Member States during the universal periodic review with a view to preparing a draft implementation strategy with a realistic timetable. The work undertaken to prepare the Committee on the Elimination of Violence against Women follow-up report may provide a template;

(b) Finalize and publish strategic plans and policies for achieving measurable progress in attaining the Sustainable Development Goals;

(c) Accelerate and simplify the process for granting communal land titles;

(d) Ensure that the list of court fees is publicly displayed in all courts and that any additional fees that clerks may legitimately charge are also verified and publicly displayed;

(e) Ensure that notices indicating that no payments can be made to prison guards or other prison staff are clearly displayed at the entrance to all detention centres;

(f) Increase efforts to minimize pretrial detention and the use of non-custodial sentencing in appropriate cases, supporting this with public awareness-raising and information campaigns;

(g) Release the human rights defenders in detention against whom no evidence has been presented;

(h) Take all measures necessary to ensure that the 2018 elections are peaceful and credible, that they take place without threats, arrests or acts of intimidation, and that all international human rights obligations related to elections, such as rights to freedom of expression, association and assembly, are respected and protected.

69. The following recommendations are highlighted for consideration, to enable the Government to determine how best to ensure the application of laws in compliance with international human rights standards:

(a) Strengthen judicial mechanisms protecting victims of domestic violence and trafficking, intensifying efforts to train judicial officers and law enforcement officials on the Law on the Prevention of Domestic Violence and the Protection of Victims to ensure effective prosecutions rather than recourse to mediation, and ensure that mediation and informal mechanisms are used only in non-criminal cases;

(b) Ensure the wide dissemination of the Law on Peaceful Demonstrations and the implementing guide thereon, supported by appropriate training programmes for national and provincial authorities, including law enforcement officials, to ensure that the Law is correctly applied, and consider preparing similar guidelines on the application of the Law on Associations and Non-Governmental Organizations and the Law on Trade Unions, in cooperation with stakeholders, to ensure that the Laws are applied in a manner consistent with the State's human rights obligations;

(c) Reconsider provisions of the criminal codes that can be used to restrict freedom of expression, so as to achieve greater compatibility with international human rights standards, decriminalizing offences as necessary;

(d) Increase efforts to systematically record and report cases, with a summary of the reasoning and draft guidelines on evidentiary requirements, and ensure that members of the judiciary are fully trained thereon;

(e) Stop rounding up persons in street situations, release all persons being detained in the drop-in centre involuntarily and implement the recommendations arising from the 2015 national conference on persons in street situations.